FILE COPY

In the Supreme Court of the United States

October Term ~~1922~~ 1921

THE STATE OF WYOMING,
Complainant,
vs.
THE STATE OF COLORADO, THE GREELEY POUDRE IRRIGATION DISTRICT and THE LARAMIE RESERVOIRS AND IRRIGATION COMPANY,
Defendants.

3. Dig

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN RE PETITION FOR REHEARING.

HARVEY H. CLUFF,
Attorney General of Utah,
WILLIAM A. HILTON,
Assistant Attorney General of Utah,
Solicitors and Counsel for the State of Utah.

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NO. 3 ORIGINAL

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THE STATE OF COLORADO,
et al,
Defendants.

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Comes now, Harvey H. Cluff, Attorney General of the State of Utah, and moves the Court for leave to file a brief as amicus curiae in Re: petition for rehearing in the above entitled cause.

He says that the questions involved therein are of great public interest and importance, and vitally concern the whole people of the State of Utah, the final decision of which will materially affect the progress and welfare of Utah and its citizens, for this State is similarly situated as are the States of Colorado and Wyoming, with respect to the uses which may be made of interstate streams, and the rule applied by this Court to the determination of interstate water problems in said States will directly affect and irrevocably determine the rights and

interests of Utah in the same way that it does in the States of Colorado and Wyoming.

The State of Utah therefore has a deep interest in the final decision of this controversy; and if this case should be decided adversely to its rights and interests it is without remedy, and there is no form of proceeding in which it could have that decision revised in this Court, or anywhere else.

He respectfully asks, on behalf of the said sovereign State of Utah, an opportunity to be heard before its rights are concluded, and asserts that if he be so privileged he will prepare and file his brief at the earliest possible date.

HARVEY H. CLUFF,
Attorney General of the State of Utah.
WILLIAM A. HILTON,
Assistant Attorney General.

Copy of the foregoing mailed to the Attorney General of Colorado and of Wyoming this 5th day of September, 1922.

In the Supreme Court of the State of Utah

THE STATE OF WYOMING,
Plaintiff,

vs.

THE STATE OF COLORADO,
Defendant.

BRIEF OF STATE OF UTAH, AS AMICUS CURIAE.

The State of Utah has filed its petition for leave to file a brief amicus curiae in this case, for the reason it feels there is a principle being developed by the court which is of far reaching importance to Utah and of other arid states, and one in which the state of Utah is vitally interested.

There are many questions involved in the case of which we have no concern, and we wish only to direct the court's attention to the one which we consider the paramount issue—that is—the determination as to whether or not the doctrine of prior appropriation shall prevail as among or between states, or the doctrine of equitable apportionment.

In reading the decision of the court in this case, it seems to us that the former principle has been adopted

and is sought to be established as the controlling doctrine, while the court in the Kansas-Colorado case adopted the latter doctrine.

Utah lays claim to being the mother of irrigation in this country and through our experience of over seventy-five years, we are convinced that the only right, just and equitable doctrine to prevail is that of equitable apportionment, after taking into consideration all the effects and results of irrigation on the upper lands of the interstate streams.

We have read with much interest what the attorney general of Colorado has said on this point in his petition for rehearing, and we wish here to endorse and adopt the same as part of our contention.

In order that we may better illustrate our point, let us take the great Colorado basin as our example for development of the agricultural resources within its boundaries. Whether state lines cross the Colorado Basin, matters little, for nature has made the basin a unit which demands for the general prosperity of the southwest and all our whole country that it be developed with approximately equal emphasis throughout its full extent. The natural outlet of the basin is from the Gulf of Mexico up to the Los Angeles country. It is in that direction that the people of the upper reaches of the river may most profitably engage in trade. The climate and the citrous fruits, and the early vegetables, are needed by the people in the upper states, but the people of the lower reaches of the river need the cattle, sheep, potatoes, milling-grain, coal, copper and iron, and other natural resources of the up-

per states. There must be an equal proportionate development of the whole basin to insure the best interests of each separate part. This must be the fundamental thought in the making of any acceptable program relative to the Colorado River. If the court should adopt the hard and fast rule of prior appropriation and permit the people who settle the lower valleys, because of the convenience and more readily accessibility of the streams and fertility of the land, to claim the first and paramount right to the waters of the stream against the people who may settle on the upper reaches of the river, it would of necessity retard the development of the entire basin to the great injury of the whole country. Since the foundation of any commonwealth is agriculture, it follows that in arid and semi-arid countries, irrigation is the first compelling practice, which once properly established will lead to the development of all other resources.

The application of broad and general principles, such as are desirable in the consideration of the great problem of the Colorado River Basin, varies with the quantity of irrigation water available, and the ease of winning it to agricultural purposes.

Experience has demonstrated beyond all doubt that the use of water on the upper lands in time tends to operate as a reservoir and in low water seasons furnishes an increase in the stream for the lower lands. If the lower lands were permitted by reason of prior appropriation to hold the water and not allow the upper settlers to divert it and bring their lands under cultivation, the upper lands must remain barren and unproductive. Within the last

twenty-five years, the duty of water in the older irrigation districts has certainly doubled and the increase is still going on. This is not surprising, since only the relatively small quantity of water taken from the soil by plant roots and evaporated at the leaves, that is, the water transpired—has any real value in plant production. The average rainfall on the upper reaches is nearly sufficient, if conserved, to supply the transpiration needs of crops.

As the art of irrigation advances, less water will be applied to the soil, better cultivation will be practiced, the duty of water will increase and the effective flow of our streams, in terms of acres to be served, will increase correspondingly. The only possible way for the just and equitable rights of individual citizens of the various states to be protected is by the establishment in this country of—once and for all—the doctrine of equitable apportionment of water of interstate streams between or among the states through which such streams may pass.

A very dangerous element in the doctrine of prior appropriation is that it carries with it the feeling of ownership of water irrespective of use. The riparian doctrine of water ownership was rejected by the early western pioneers, and has been found an improper, development-retarding, impossible doctrine wherever irrigation is practiced. The actual or prospective use of water for economic purposes should be, in an arid country, the only foundation for ownership of water. In our day, in the face of the irrigation experience of three quarters of a century, a percentage of quantitative diversion of the waters of the Colorado would be, aside from its unscien-

tific aspects, a grievious reflection upon the possibility of interstate comity, the natural patriotism and harmonious friendliness of these sister states, and a direct affront to the coming generations who would be obliged to untangle our error.

Irrigation is an important feature in the development of the arid west and while it becomes necessary for each state to have its own regulative laws relative to the appropriation of water and the rights of its citizens, it also becomes necessary that a broad equitable view be taken as to the rights of the respective states on interstate streams; that no selfishness be allowed to enter into the right to the use of the waters of such streams, but that conservatism, beneficial use and the best interest for the entire country be the ruling thought and if this is done, the doctrine of equitable division must prevail.

This court is now blazing a new trail, which will effect the future irrigation laws, water rights and development of the entire western country and that trail should be hewed along broad and liberal lines, which shall form the basis of our future irrigation progress and the stable and equitable adjustment of water rights as between states.

All that we have said—using the Colorado basin as an illustration—is true of all sections of the arid west, and because of these facts, Utah is very desirous of having this court sustain the broad rule of equitable division as against the rule of prior appropriation in the settlement of all water disputes between the states. Hence we present this motion as favoring a rehearing of the case, in

the hope that we may have an opportunity to elaborate more fully on the subject in the oral argument before the court.

Respectfully submitted,

HARVEY H. CLUFF,

Attorney General of the State of Utah,

WILLIAM A. HILTON,

Assistant Attorney General of the State of Utah,

Solicitors and Counsel for the State of Utah.